FOR MYSORE STATE

Rural welfare (1953) Department.

MS SERIES.

G.O. NO. 892

Dated 15-7-1953.

Closed

Sanjdt.

[Despatch Abstract.]

H.R & C.E – Sree Krishnapur Mutt, Udipi – A.S. No 132 of 1949 – High Court of Madras – Filing of appeal in the Supreme Court by the Commr, H.R & C.E (A) Dept – Approved.

G.F. 32—14-67,656 21-3-52.

H.R. and C.E.(Adm) Department

From (Name) Sri C.Narasimhan, I.A.S.,
Designation Commissioner,
Station Madras.

Received Registered

To 43659

The Secretary to Government,
Rural Welfare Department,
Fort St.George, Madras.

Enclosures: L No. 52689/52-6 Lgl (D) dated 9-6-1953. 195

ADDITIONAL ASST. SECRETARY TO GOVT. 10 JUN 1953 RURAL WELFARE DEPARTMENT

Sub: Hindu Religious and Charitable Endowments-South Kanara District- Udipi- Sri Krishnapur Math-A.S.No.132 of 49-High Court-Madras- Filing of appeal in the Supreme cour

---

No.132 of 1949 High Court, Madras was filed by the hereditary trustee and the madathipathi of Sri Krishnapur math, Udipi, South Kanara Dt., to set aside or modify the decree of the Dt.Court, South Kanara in O.S.1/47 confirming with slight modifications the scheme of administration settled by the Ex.Board in its order No.4060 dated 20-11-1946. The Ex-Board and the Executive officer appointed by it were the respondents in the appeal. While the appeal was pending the present Madras Act of 1951 came into force and the Commissioner was brought on record in the place of the Ex.Board. When the appeal came up before their Lordships Mr.Justice Satyanarayana Rao and Mr. Justice Rajagopalan, the counsel for the madathipathi contended that the rights which have been secured to Sri Shirur Math by the judgment of the High Court (in C.M.P.No.2591/51), should also be secured to the math in question. The counsel for the Department, contended that the scheme as framed by the Ex-Board and confirmed by the District Court, South Kanara should stand and that the provisions of Madras Act XIX of 1951, were legal and intravires. Their Lordships modified the scheme on the basis of their judgment in the Shirur math case and held that the basic principle of the scheme framed by the Ex.Board and confirmed by the District Court was the control exercised by the Ex.Board over the management through an executive officer appointed by it and that it was not permissible in view of their judgment in the Shirur Math case. Accordingly the scheme has been modified and the office of the Executive officer has been abolished. Instead, it has been provided that the day to day -

administration of the Secular affairs of the math should be carried on by a Salaried manager to be appointed by the Swamiar under whose control and superintendence, the Manager should function.

The appeal involved substantial questions of law, namely, the rights of the head of a math, the legal relationship between him and the properties which are in his possession as the head of the math and the degree of control and superintendence that could be legitimately exercised over the madathipathi and that by reason of their Lordships following their own decision in the Shirbor math case, the appeal under reference also involved the same questions of law as to the interpretation of the constitution in respect of the rights of the Swamiar under Articles 19(1)(f) 25 and 26, which were discussed and decision given by their Lordships in the Shiroor Math case. Since, the judgment in the Shiroor math case has been taken on appeal to the Supreme court, it was felt necessary and desirable that the judgment of their Lordships in this appeal suit also, should be taken on appeal to the Supreme Court for finality of the decision, and, for that purpose, a petition for leave to appeal to the Supreme court was filed in the High Court under Articles 132 and 133 of the constitution. After arguments, the court by its order dated 30-4-1953 granted the necessary leave for appeal.

not need

pp. 15-11 below

I send herewith 4 copies of the judgment and decree of the High Court in A.S.132/49 and a copy of the petition filed for grant of leave to appeal to Supreme court for information. Receipt of the Copy of order of the Court granting leave to appeal is awaited.

pp. 17-25 below

By his letter No.6547 dated 8-6-1953, the Government pleader, Madras requested that a sum of Rs.500/- may be sent to him before 8-6-1953 since that amount has to be deposited on or before 10-6-1953 towards printing deposit and it has been accordingly

sent.

In the circumstances stated above I request that my action in taking up the judgment of the High Court in A.S.No.132/49 on appeal to the Supreme Court, in view of the constitutional points involved therein, may be approved and that I may be permitted to incur the necessary expenses for the purposes of the appeal in the Supreme court.

Commissioner

Enc:3.

1. to 2. Copies of judgment and decree in A.S.132/49 High Court,
3. Copy of petition for leave to appeal.

H.R.9.6.

(1)

In the High Court of Judicature at Madras.
FRIDAY THE EIGHTH DAY OF AUGUST, ONE THOUSAND NINE HUNDRED AND FIFTY TWO.

Present: The Honourable Mr. Justice Satyanarayanarao and The Honourable Mr. Justice Rajagopalan.

Appeal No.132 of 1949.

His Holiness Shimad Vidyarathana Theertha Swamiar of Shri Krishnapur Mutt-- Appellant(Plaintiff)

1. The Hindu Religious Endowments Board, Madras represented by its Secretary. The Commissioner for Hindu Religious Endowments, Madras substituted in the place of the 1st Respondent vide Order dated 3-8-1952 in C.M.P. 4037 of 1952.

2. Aroor Krishnamurthi Rao. Respondents(Defts)

Appeal preferred against the decree of the Dt.Court of South Kanara in O.S.1 of 1947.

This appeal coming on hearing on Monday the 21-7-1952 and Tuesday the 22-7-1952 and having stood over for consideration till Thursday the 7th August 1952 the court delivered the following judgment.

(Judgment of the Court was delivered by Satyanarayanarao J)

This is an appeal by the plaintiff, the Matathipathi of Sri Krishnapur Mutt, against the decree and judgment of the District Judge of South Kanara by which the scheme framed by the first defendant, the Hindu Religious Endowments Board, Madras was modified. The suit was instituted under section 63(7) of the Hindu Religious Endowments Act before it was repealed by the Madras Hindu Religious and Charitable Endowments Act 1951) (XIX of 1951). This mutt is one of the eight mutts at Udipi established by Sri Madhavacharya. The history of these muths and the relationship inter se between the Sri Krishna temple and the mutts was considered by us in our judgment in Sri Shirur Mutt V. Commissioner H.R.E. Board(1) 1952 M.L.J. 567. In this appeal by the plaintiff the question about the validity of the provisions of the new Act, the Madras Hindu Religious and Charitable Endowments Act XIX of 1951, was raised. When the learned Dt.Judge disposed of the matter, the new Act had not come into force, and he found that the grounds on which the Board proceeded to frame a scheme for the management of the Mutt were well-founded but he however thought that certain clauses in the scheme required modification. He directed these clauses to be modified by the decree which is now under appeal.

Learned counsel for the appellant attempted to argue that the grounds on which the scheme was framed by the Board were not well founded.He however took up the portion that even if a scheme were to be framed, the scheme should decree to the Matathapathi the rights which have been secured to the Shirur Mutt by our judgment in the aforesaid case. For, according to him the provisions of the Act which have been declared to be ultra vires should be inapplicable to this mutt also for the same reasons. If the scheme therefore were to be modified keeping in view the provisions of the new Act which have been declared ultra vires by us we thought that there would not be any possible objection for the enforcement of the scheme. Learned counsel for the appellant was willing to accept that position. It is in that light we thought it unnecessary to go into the question whether the finding of the learned District Judge regarding the acts of mismanagement is correct and record our finding. Of course, the learned counsel for the Commissioner contended that the scheme as framed by the Board should stand and that the provisions of the new Act were intra vires. But this contention we are unable to accept in view of our decision relating to the Shirur Mutt, which was one of the eight mutts. After discussion with learned counsel appearing on both sides and in the light of our judgment in Sri Shirur Mutt V. Commissioner,H.R.E.Board(1) 1952 I M.L.J. 567 we modified the scheme to append it to this judgment. The basic principle of the scheme framed by the Board and as modified

by the District Judge is the control by the Board of the management through an Executive officer appointed by it. This in our view is not permissible in view of our judgment, that the provisions of the Act in that behalf are ultra vires. We therefore framed a fresh scheme and appended it to this judgment. The decree of the lower court will therefore be modified by incorporating the scheme as now finally framed by us instead of the scheme framed by the Board and modified by the Dt.Court.

Under the scheme as now framed by us the Manager has to be appointed by the Matathipathi. We asked the plaintiff to suggest a suitable name for the appointment as immediate provision has to be made for taking over possession of the properties and accounts from the executive officer and also from the Receiver appointed by this court during the pendency of the writ petition. The Matathipathi has suggested the name of one Sri B. Ramakrishnachar, B.A. Vidwa Visharada, Udipi. He is a Shivalli Brahmin aged about 51 years. We propose to accept this appointment temporarily for a period of three months from this day and the question of making him permanent will be considered by us before that period elapses. The scheme will be given effect to immediately and the manager will take charge of all the properties and accounts and other documents from the executive officer and will also conduct such of the litigations which under the scheme are to be conducted by the Matathipathi except those the conduct of which has been entrusted under this scheme to the Commissioner. A detailed statement of such suits, appeals and other proceedings has been filed by Mr.Seshachalapathi learned Advocate for the Commissioner and that statement also will form part of the decree. Those proceedings will be conducted by the Commissioner in accordance with the directions in the scheme prepared by us. The Matathipati will fix the salary of the manager in accordance with the directions in the scheme. The Manager will enter upon the administration of the Mutt in accordance with the directions in the scheme and will be entitled to operate upon the bank accounts in accordance with the directions in the scheme in the place of the Executive officer. The Receiver will apply to the Dt.Court for discharge after submitting his accounts and getting them duly passed. Learned counsel for the plaintiff undertakes on behalf of his client to pay from out of the mutt funds the arrears of salary due to the Executive officer and the staff appointed by him. This will be carried out by the matathapati. Costs of both the parties will be paid from out of the mutt funds by the plaintiff. The matter will be posted before us on 3rd October 1952.

Appendix.

1.The scheme shall come into force from the date of this judgment.

2.The administration of the affairs of Sri Krishnapur mutt, Shivalli, Udipi Taluk, S.Kanara Dt., and all the subtemples and endowments attached thereto shall vest in the madathipathi the Swamier of the mutt.

3.The day-to-day administration of the secular affairs of the mutt shall be carried on by a salaried manager, who shall be appointed by the swamier. The Manager so appointed should preferably be a member of Shivalli Brahmin community. He should be at least above 30 years of age on the date of the appointment. The salary and conditions of service of the Manager shall be settled by the Swamier in consultation with the Commissioner for Religious Endowments and Charities. In case of any dispute on any of the points referred to above between the swamiar and the Commissioner, it shall be open to either party to apply to the Dt.Court of South Kanara for the settlement of the dispute under the provisions of the scheme.

This minimum qualification should be that of a Graduate

4.The Manager shall work under the superintendence and control of the swamiar and shall carryout all lawful orders issued

to him by the Swamiar.

5. The Manager shall have the power to receive all the income both in cash and in kind and to make disbursements. He shall maintain correct accounts of all receipts and disbursements of the Mutt, whether received or made by him or by the swamiar, supported by proper vouchers. The funds of the mutt shall be deposited in any of the schedule banks. The manager shall have the power to operate on the bank account.

6(1) The Swamiar shall prepare a dittam of expenditure for each fasli one month before the commencement of the fasli for the following heads of expenditure:-

(a) expenses incurred in respect of religious worship, ceremonies feeding and festivals to be performed and conducted at the various mutts and temples;

(b) expenses of the Swamiar and his staff including all salaries and wages of the staff employed for religious worship and ceremonies in all mutts and temples;

(c) the expenses of travel,
(d) the annual repairs to the buildings of the mutts and temples in his possession and under his control.

(ii) the Manager shall prepare a consolidated budget including the dittam settled by the swamiar for the approval of the Swamiar and forward a copy of the budget to the Commissioner for his information.

(iii) all personal offerings to the Swamiar including Padhaganikkais shall be his exclusive personal property and not subject to audit. Nor shall they be included in his budget for the mutt.

7(1) the servants of the mutt shall work under the immediate control and superintendence of the Manager, and they shall obey all his lawful orders.

(ii) The Swamiar shall have the power to suspend, dismiss or remove any servant of the Mutt including the Manager for just cause.

8. The accounts of the Mutt shall be closed every month, and the Manager shall forward to the Commissioner an abstract of the monthly accounts before the 10th of the succeeding month.

9. The Manager shall see that once in every year the following statements are prepared for the approval of the Swamiar and that a report thereon is sent to the Commissioner:

(a) an annual verified statement of the endowments,
(b) administration report (c) audit reports and replies to the audit objections, if any,
(d) demand collection and balance statements,
(e) improvements to the buildings.
(f) additions to the jewellary if any.

10. The accounts of the Mutt shall be audited annually.

11. The immovable properties of the mutt shall, to the extent possible be leased out in open auction, subject to the sanction of the Swamiar and the Manager shall take registered lease deeds in the name of the swamiar.

12. In the event of any doubt or dispute arising in construing any provision in the scheme, the swamiar or the Commissioner may apply to the district court of South Kanara for its decision.

13. The Swamiar or the Commissioner or any other party

(2)

In the High Court of Judicature at Madras.

Friday the Eighth day of August.
One thousand nine Hundred and fifty two.

Present: The Honourable Mr.Justice Satyanarayanara , and the Honourable Mr. Justice Rajagopalan.

Appeal No.132 of 1949.

His Holiness Shrimad Vidyarathna, Theertha Swamiar of Shri Krishnapur Mutt, Appellant(Plaintiff)

1. The Hindu Religious Endowments Board, Madras by its Secretary.

The Commissioner for Hindu Religious Endowments,Madras-Substitute in the place of the 1st respondent vide order dated 8-8-1952 on C.M.P. No.4037/52.

2. Arsor Krishnamurthi Rao- Respondents(Defendants)

Appeal against the decree of the Dt.Court of South Kanara in Original suit No.1 of 1947.

Decree: This appeal coming on for hearing on Monday and Tuesday the 2st and 22nd day of July 1952 and having stood over for consideration till yesterday and having been set down for being mentioned to-day upon perusing the grounds of appeal, the judgments and decree of the Lower court and the material papers in the suit and upon hearing the arguments of M/s. T.Krishnarao and K. Vittal Rao, advocates for the appellant and of M/s. M.Seshachalapathi and T.K.Raman Nambisan advocates for the 1st respondent and of Mr.V. Balakrishna Eradei, Advocate for the 2nd respondent this court in supersession of the decree of the lower court sav as to costs doth order and decree as follows.

1. that the scheme appended thereto shall be the scheme in regard to the administration of the suit mutt and its affairs and shall be given effect to immediately,

2. that the suggestion of the appellant to appoint Sr.B.Ramakrishnacar,B.A., Vidwan Visharada,Udipi, a Shivalli Brahmin aged about 51 years as Manager of the suit mutt be and hereby is accepted and he is appointed as such manager temp rarily for a period of three months from this date,

3. that the Manager shall take charge of all the properties and accounts and other documents from the Executive officer and from the Receiver and shall also conduct such of the litigations which under the scheme are to be conducted by the Matadipathi except those the conduct of which has been entrusted under this scheme to the Commissioner of Hindu Religious and Charitable Endowments a list of which is appended hereto, and that the proceedings conducted by the Commissioner shall be accordance with the directions contained in the scheme appended hereto;

4. That the executive officer before he hands over charge to the manager now appointed, is permitted to draw from out of the mutt funds depsited in the Banks a sum of Rs.2000/- (Rs.Two thousandx) and pay the same to the Commissioner for meeting the preliminary expenses of printing charges etc of the appeals to be filed;

5. that the Matathipati of the suit mutt shall fix the salary of the manager in accordance with the directions contained in the scheme appended hereto,

6. that the manager shall enter upon the administration of the suit mutt in accordance with the directions contained in the scheme; and that he shall be entitled to operate upon the Bank accounts of the suit mutt in accordance with the directions in the scheme in the place of the executive officer,

14

7. that the Receiver appointed by this court in C.M.P.Nos.4922 and 5080 of 1952 shall apply to the Dt.Court of South Kanara for discharge after submitting his accounts and getting them duly passed and

8. that the appellant plaintiff do from and out of the mutt funds, pay the arrears of salary due to the Executive officer and the staff appointed by him and

9. that the appellant plaintiffs do from out of the mutt funds pay himself Rs.1628/10/6(Rs.One thousand six hundred and twenty eight annas ten and pies six) for his costs of this appeal and do also pay the 1st respondent Rs.1806/14/)Rs.One thousand eight hundred and six and annas fourteen) and to the 2nd respondent Rs.153/-.

Rupees one hundred and fifty three) as and for their respective costs of this appeal

Memo of costs of appellant-plff.

Stamp for vakalathama	Rs.3/-
do used for memorandum of appeal.	50/-
do used for the lower court decree	1/-
do judgment.	0/12/-
value of stamp papers used for enclosures.	47/11/6
advocate's fee allowed.	750/-/-
Batta and postage.	2/14/-
Translation and printing charges.	773/5/-
	1628/10/6

Memo of costs of 1st respondent(1st deft)

stamp for vakalathama,	Rs.3/-
advocate's fee allowed.	750/-
Translation and printing charges.	1053/14/-
	1806/14/-

Memo of costs(2nd respondent (nd deft)

Stamp for vakalathanamh.	Rs.3/-
Advocate's fee as allowed and certified.	150/-
tra slation and printing charges.	-/-/-
	153/-/-

List of cases entrusted to the Commissioner vide paragraph 3 of the decree herein)

1. Appeals pending in the High Court.

S.No.	Appeal or suit.		Name of the appellant or plaintiff.
1.	Appeal Suit	564/49	Girija Bai.
2.	A.S.	838/50	Ganapaya Tantri.
3.	"	926/50	A.Gopal Bhat.
4.	"	927/50	U.Vadiraja Acharya.
5.	"	928/50	A.Venkataramana Bhat.
6.	"	159/51	Mrs.Chandu Naiksani.
7.	"	929/50	Vadiraja Achar.
8.	"	425/51.	C.Lakshminarayana Bhat.

II Suits pending the lower court.

(1) O.S.193/49 Sub Court, Mangalore- Ganapayya Tantri.

III. Appeals pending in the lower court.

1.	A.S.326/50	D.C.Mangalore.	Gopala Krishnayya.
2.	" 333/50	-do-	N.Seetharama Acharya.
3.	340/50	-do-	A.Venkatramana Bhatta
4.	341/50	-do-	-do-
5.	342/50	-do-	A.Srinivasa Bhatta.
6.	343/50	-do-	A.Venkataramana Bhatta.
7.	344/50	-do-	-do-
8.	345/50	-do-	Hari Bhatta.

IV. Second appeals to be filed against the decision of the Sub Judge allowing the appeals in the following cases.

1.	A.S.No.335/51.
2.	" 336/51
3.	" 337/51
4.	" 338/51
5.	" 339/51
6.	" 340/51
7.	" 341/51
8.	" 342/51
9.	" 343/51
10.	" 344/51
11.	" 345/51
12.	" 346/51
13.	" 347/51
14.	" 348/51
15.	" 373/51
16.	" 374/51
17.	" 375/51
18.	" 377/51
19.	" 378/51
20.	" 379/51
21.	" 397/51
22.	" 398/51
23.	" 399/51
24.	" 405/51
25.	" 406/51
26.	" 407/51

Order delivered by Rajagopalan J.

Scheme.

1.The scheme shall come into force from the date of this judgment.
2.The administration of the affairs of Sri Krishnapur Mutt, Shivalli Udipi taluk, S.Kanara Dt., and all the sub temples and endowments attahced thereto shall vest in the Madathipathi the Swamiar of the mutt.

3. The day-to-day administration of the secular affairs of the mutt shall be carried on by a salaried manager, who shall be appointed by the Swamiar, The Managr so appointed should preferably be a member of Shivalli Brahmin community. His minimum general qualificatio should be that of a graduate. He should be at least about 30 years of age on the date of the appointment. The salary and conditions of service of the manager shall be settled by the Swamiar in consultation with the Commissioner for religious Endowments and Charities. In case of any dispute on any of the points referred to above between the swamiar and the Commissioner it shall be open to either party to apply to the Dt.Court of South Kanara for the settlement of the dispute under the provisions of the scheme.

4.The Manager shall work under thesuperintendence and control of the swamiar and shall carryput all lawful orders issued to him by the swamier

5.The Manager shall have the power to receive all the income both in cash and in kind and to make disbursements. He shall maintain correct accounts of all receipts and disbursements of the mutt, whether received or made by him or by the swamiar

14

supported by proper vouchers. The funds of the mutt shall be deposited in any of the scheduled banks. The Manager shall have the power to operate on the bank account.

3(1) The swamier shall prepare a dittam or expenditure for each fasli one month before the commencement of the fasli for the following heads of expenditure.

(a) expenses incurred in respect of religious worship, ceremonies feeding and festivals to be performed and conducted at the various mutts and temples,

(b) expenses of the swamiar and his staff including all salari and wages of the staff ~~xxx~~employed for religious worship and ceremonies in all mutts and temples,

(c) the expenses of travel;

(d) the annual repairs to the buildings of the mutts and temples in his possession and under his control.

(ii) the manger shall prepare a consolidated budget including the dittam settled by the swamiar for the approval of the Swamiar and forward a copy of the budget of the Commissioner for his information.

(iii) all personal offerings to the swamiar including Padhanikais shall be his exclusive personal property and not subject to audit. nor shall may be included in his budget for the mutt.

7.(1) the servants of the mutt shall work under the immediate control and superintendence of the Manager and they shall obey all his lawful orders.

(ii) the swamiar shall have the power to suspend, dismiss or remove any servant of the mutt including the manager for just cause.

8. The account of the mutt shall be closed every month and the Manager shall forward to the commissioner an abstract of the monthly accounts before the 10th of the succeeding month.

9. The manager shall see that once in every year the following statement are prepared for the approval of the swamiar and that a report thereon is sent to the Commissioner.
(a)an annual verified statement of the endowments.
(b)administration report,
(c)audit reports and replies to the audit objections if any
(d)demand collection and balance statement
(e)improvements to the buildings,
(f)additions to the jewellery if any

10.The accounts of the mutt shall be audited annually.
11.The immoveable properties of the mutt, shall to the extent possible be leased out in open auction subject to the sanction of the swamiar and the manager shall take registered leasedeeds in the name of the swamiar.

12. In the event of any doubt or dispute arising in construing any provision in the scheme, the swamier or the Commissioner may apply to the District Court of South Kanara for its decision.

13.The Swamier or the Commissioner or any other party interested may apply to the Dt.Court of South Kanara to alter any of the provisions of the scheme on proper and valid grounds.

14.Notwithstanding anything contained herein before, the Commr., is authorised to ~~conduct~~ to their final termination the cases and other proceedings listed below list attached to this decree. The Commissioner may apply to the Dt.Court from time to time for payment of the necessary funds to conduct these case for and on behalf of the mutt to be paid out of the mutt properties.

Note: "Commissioner" in this scheme means Commissioner of Hindu Religious and Charitable Endowments under the Madras Hindu Religious and Charitable Endowments Act XIX of 1951.

Sd.V.T.Kandaswami, 12-9-1951
Dy. Registrar, A.S.

Sd. M.K.
Supt, of copyists.

Decree
Appeal No.132of 1939.

(True Copy)

(3)

17

Memorandum of Civil Miscellaneous Petitionn.

Under Articles 132 and 133 of the Constitution and order LXV of Civil Procedure Code.

In the High Court of Judicature, Appellate Side, Madras.

S.C.C.M.P.No. of 1952.

against

A.S.No.132 of 1949, High Court, Madras.

The Commissioner for Hindu Religious and Charitable Endowments, Madras. — Petitioner. (1st Respt. 1st Deft)

Vs.

His Holiness Srimad Vidyaratna Thirtha Swamiar of Krishnapur Matt. — Respondent.

Petition for leave to appeal to supreme court filed under Articles 132 and 133 of the Constitution of India.

---

1. The petitioner-1st respondent is the Commissioner for Hindu Religious and Charitable Endowments appointed under Act XIX of 1951. He had been brought on record in the place and stead of the Madras Hindu Religious Endowments Board since abolished under the provisions of the Act aforesaid and he is also entitled to continue the litigation in the place of the Hindu Religious Endowments Board under the provisions of the section 103(j) of the said Act.

2. The respondent is the Matadhipathi for the time being of the Sri Krishnapur Math situate in Udipi in the South Kanara Dt. of the State of Madras.

3. The said Sri Krishnapur math is a Hindu Religious Institution falling within the definition of Math contained in section 9(7) and section 6(10) of Act II of 1927 (now repealed) and Act XIX of 1951 respectively.

4. The math is possessed of considerable properties and has an income of over Rs.50,000/- per year.

5. The respondent was installed in his office as matadhipathi in or about 1933 and he became a major in 1939 and assumed management of the affairs of the institution.

6. The Madras Hindu Religious Endowments Board in the course of its general superintendence had occasion to notice as early as 1941 that the affairs of the matt were not being administered properly, that debts were being contracted and statutory returns were not being made. Therefore the Hindu Religious Endowments Board by notice dated 13-10-1942 started scheme proceedings. However on the assurances given by the Swamier that returns would be made and that he would not contract debts, the scheme proceedings were not further proceeded with. The undertakings given were not, however, complied with and on the contrary by about 1944 the debts had increased to about Rs.2,00,000/-. It was also found that large amounts were lent by the near relatives and servants of the Swamier who had no ostensible means of making such advances. Thereupon by notice dated 30-1-1945 the Hindu Religious Endowments Board started proceedings under section 62 and 63 of Act II of 1927 with a view to settle a scheme for the better administration of the matt and the properties connected therewith.

7. After conducting the enquiry in the prescribed manner and considering all the objections raised by the Swamier and other materials available, the Madras Hindu Religious Endowments Board by order No. 4060, dated 20-11-1946 settled a scheme of administration for the Sri Krishnapur matt under section 63 of Act II of 1927. The scheme inter alia provided for the appointment of an Executive officer by the Board to be in charge of the day-to-day administration of the secular affairs of the mat and all the sub-temples and endowments attached thereto and for the due preparation of the dittam, the submission of the statutory returns, audit of accounts and the leasing of properties. In pursuance of the provisions of the scheme of the H.R.E.Board appointed an Executive officer and

directed him to take charge of the office.

8. Against the said scheme the respondent filed O.S. No.1 of 1947 under section 63(1) of the Act I of 1927 on the file of the Dt.Judge's court of South Kanara praying for the cancellation of the scheme and for an injunction restraining the 2nd respondent from exercising any of the powers under the scheme. The respondent also filed I.A.No.44 of 1947 in O.S.No.1 of 1947 praying for an order to keep the scheme in abeyance and to restrain the executive officer from interfering with the administration of the math. The learned District Judge, while directing that the scheme be kept in abeyance during the pendency of the suit, directed that the Executive officer should function as a Manager under the orders of Court. Against the order of the learned Dt.Judge the respondent filed C.M.A.No.216 of 1947 and also a C.M.P. No.2630 of 1947 in this Hon'ble court. The matter came up before their Lordships the then Chief Justice Mr.Justice Satyanarayana Rao and the order of the Dt.Judge was affirmed.

9. The suit O.S.No.1 of 1947 was tried and was disposed of by the learned Dt.Judge in and by his judgment and decree dated 9-10-1948. The learned trial judge found that the Swamiar was borrowing money recklessly, that a large portion of debts would seem to be advanced by near relations and servants of the Matadhipathi who had no ostensible means of making such large advances and that the facts and circumstances of the administration disclosed in the record justified the framing of a scheme. Subject however, to certain modification the scheme settled by the H.R.E. Board was substantially confirmed and the suit was disposed of accordingly.

10. The main modification that the trial judge made in the scheme was to provide that in making the future appointments of the Executive officer, the Board should consider the representations if any, of the swamiar in respect of the proposed candidate and as far as possible give due weight to all reasonable objections of the Swamiar made in that behalf.

11. Against the said judgment and decree the respondent filed A.S.No.132 of 1949 on the file of the High Court of Judicature at Madras. The appeal was heard and disposed of by a Division Bench of this Hon'ble court consisting of their Lordships Mr. Justice Satyanarayana Rao and Mr. Justice Rajagopalan. Their Lordships held that the scheme as modified by the Dt.Judge required further modification in the light of their decision in the Shirur Mutt case reported in 1952(1) M.L.J. 557 and accordingly passed a modified scheme decree dated 8th August 1952. According to the modified decree of their Lordships, the office of the Executive officer has been abolished and it was provided that the day-to-day administration of the secular affairs of the matt should be carried on by a salaried Manager to be appointed by the Swamiar under whose control and superintendence the manager should function. Their Lordships deleted certain other provisions of the scheme as well.

12. Against the said judgment and scheme decree the petitioner desires to file an appeal to the supreme court of India.

13. The petitioner submits the subject matter of the dispute in the court of first instance and in appeal in the High Court is with respect to the superintendence, administration and Management of the matt and its properties whose annual income alone is more than Rs.50,000/- per annum. In any event, the judgment and decree of the Division Bench involves directly or indirectly claims and questions respecting properties well over Rs.20,000/-. The petitioner therefore submits that the appeal satisfied the conditions laid down in clauses (a) and (b) of Article 133(1) of the Constitution.

14. In abolishing the office of the Executive officer and vesting the day to day administration in a manager to be appointed by the Swamier have virtually reversed the decision

of the trial court and the judgment of their Lordships is therefore a reversing judgment.

15. The petitioner submits that by reason of their Lordships following their own decision in the Shirur mutt case the appeal involves the same substantial questions of law as to the interpretation of the constitution of India in respect of the rights of the Swamier under article 19(1)(f) and 25 and 26 and other articles of part III of the Constitution of India. Leave to appeal to the Supreme court had already been granted under article 132 in the said Shirur mutt case.

16. The petitioner submits further that the appeal involves substantial questions of law namely, the rights of the head of a math, the jural relationship between him and the properties which are in his possession as the head of the math and the degree of control and superintendence that could be legitimately exercised over the Matadhipathi in respect of the administration of the properties. The petitioner therefore submits that in any event this Hon'ble court may be pleased to issue a certificate that it is a fit case for appeal to the supreme court.

17. It is therefore prayed that this Hon'ble court may be pleased to grant the necessary leave to appeal to the supreme court under Articles 132 and 133 of the constitution of India read with Order XLV of Civil Procedure Code.

18. The petitioner begs to annex hereto the Memorandum of grounds of appeal.

Grounds of appeal.

(1) The learned judges should have affirmed the scheme as settled by the learned Dt. Judge.

(2) The learned judges erred in thinking that their decision in the Shirur mutt case entirely governs the present case.

24

(3) The learned judges failed to see that having held that the provision for setting the scheme is not ultra vires, there was no justification for drastically altering the character of the scheme.

(4) The learned judges erred in observing that there was no necessity to go into the question of the mismanagement and the findings of the learned Dt.Judge in that behalf.

(5) The learned judges failed to note that there was considerable documentary evidence to sustain the findings of the trial court.

(6) The learned judges erred in abolishing the office of the Executive officer and directing instead the appointment of a Manager by the Swamier himself.

(7) The learned judges failed to see that in view of the findings of the trial judge as to the character of the indebtedness and the general conduct of the Matadhipathi it is necessary in the interests of the matt and the properties connected therewith that the person to be in charge of the administration should be one responsible to and appointed by the statutory authority.

(8) The learned judges failed to one that by vesting the Swamier with the power to appoint and control the work of the Manager, the safeguard provided for in clause 3 of the scheme of the Board as modified by the Dt.Court has been completely eliminated.

(9) The learned judges did not appreciate the necessity for the provision for the appointment of an Executive officer by the statutory authority in the interests of the math.

(10) The learned judges erred in thinking that the provision for the appointment of an Executive officer is opposed to the fundamental right of the Swamier.

(11) The learned judges erred in thinking that the appointment of an Executive officer militate against the rights of the Matadhipathi under article 19(1)(f) and 25 and 26 of the constitution as held in the Shirur math case.

(12) Their Lordships failed to note that there is no warrant for holding that the provision for the appointment of the Executive officer is destructive of the rights and priveleges of the Swamier.

(13) Their Lordships failed to see that the Matadhipathi is the Manager of the properties which are vested in the institution and as such it is competent for the appropriate authority to provide for the better administration of the said property.

(14) Having held that the scheme is necessary, the learnnd judges should have held there was no reason to amend the scheme in the manner they have done.

(15) The learned judges erred in naming the Swamier the sole abiter in respect of the appointment as Manager and ignoring the statutory authority completely.

(16) The learned judges should have been that even according to the case of the Swamier in the High Court the Executive Officer should be appointed by the Swamier on the approval of the H.R.E.Board(Vide ground No.20 of the grounds of appeal).

(17) The learned judges erred in entirely changing the provisions in regard to the preparation of the budget and sending the same to the Commissioner.

(18) The learned judges should have been that the modifications introduced by them have the effect of nullifying all effective or legitimate superintendence by proper statutory authority.

(19) The learned judges failed to see that there are specific provisions in regard to audit namely sections 71, to 75

and should have provided that the audit shall be in accordance with the Act.

(20) The learned judges erred in deleting clause 14 of the scheme.

(21) The other inferences of fact and law are erroneous.

Sd.
Government Pleader.

(True Copy)
9.6.53

1365/53

27 R.W.V.

H.R.&C.E. – Sri Krishnapur math, Udipi
A.S. No. 132 of 1949 High court of Madras
– filing of appeal in the Supreme
Court by the comm., H.R.&C.E.(A) deptt
– Approved.

9/8/53 1/8/7

Read: From the comm. H.R.&C.E.(A) deptt.
No. S2639/52-6 Dt. 9-6-53
G.O.(Ms) No. 892 R.W. dt. 15-7-53

The Govt approve the action of the comm. H.R.&C.E.(A) deptt in having taken the judgment of the High court in A.S. No. 132/49 relating to Sri Krishnapur Math, Udipi, S.K.D.C., on appeal to the Supreme court, in view of the constitutional points involved therein.

pp 2-3 cf

2. Sanction is accorded to the incurring of an expenditure of Rs. 500/- (Rupees five hundred only) towards as deposit for printing of records in the above appeal. The action of the comm. H.R.&C.E.(A) deptt. in having sent a sum of Rs. 500/- to G.P. Madras, for printing of records, in anticipation of approval by the Govt, is ratified. The comm. is also permitted to incur the necessary expenses for the purposes of the above appeal in the Supreme court.

p. 2 cf

3. The expenditure will be debited to "2) Admn of Justice – b Law Officers – D contingencies"

18/7

To
comm. H.R.&C.E.(A) deptt
Advocate-Gen
Copy to Regl. H.C.
Bombay deptt
G.P. Madras.
to Andhra State
Mysore State

GOK 17.7.53

F.7.53

Dy 8/7/53. DRS 9.7.53

Rw i

Sub: HR&CE — S.K. of Sri Krishnapur matt — A.S. No. 132 of 1949 — Filing of appeal in the Supreme Court — Refusal — Petition coming No. 52639/52 dt. 9.6.53

pp. 1-2 cf

The ex HRE Board, by its order No. 2060 dt. 20.11.1946 settled a scheme of administration for Sri Krishnapur matt, S.K. dt under Sec. 63 of ~~Act~~ HRE Act, 1926, since the affairs of the matt were not being administered properly by the Swamiar. Under the provisions of the scheme, the Board appointed an E.O. to be in charge of the Secular administration of the matt. Against the scheme, the Swamiar filed a suit ~~No. 1 of 1947 on the file of the Dt Judge~~ S.K. in the Dt. court, S.K. praying for the cancellation of the scheme and for an injunction restraining the Bd from exercising any powers. The Dt Judge, ~~with certain modifications,~~ substantially confirmed the scheme settled by the ex HRE Bd and the suit was disposed of accordingly

p 20 cf

ibid

2. The main modification in the scheme was that the Swamiar should be consulted by the Board, when any E.O. is appointed.

A at p 21 cf

3. Against the judgment of the Dt. Judge, S.K., the Swamiar filed an appeal A.S. No. 132 of 1949 on the file of the High court, Madras. The High court held that the scheme, modified by the Dt court, required further modification in the light of the judgment given in Shirur Mutt case

p 22 cf

pp. 5-15 cf

~~in its decree dt. 9.8.1950~~, the High Court

framed a modified scheme according to which the Secular administration of the mutt should be carried on by a salaried manager appointed by the Swamiar under whom as supervised, ~~and certain other provisions of the scheme were deleted~~ in pp. 5-15 (Vol) functions

Please see the copy of the judgment and the modified scheme of the High Court at pp. 5-15 Cf

4. The commr. H.R&CE dept. who was the respondent in the appeal, ~~filed an application~~ filed a petition in the High Court pp. 17-26 Cf to grant the necessary leave to appeal to the Supreme court under Arts. 132 & 133 of the Constitution of India read with Order XLV of C.P.C

Please see the application at pp. 17-21 Cf

It has been reported by the commr. that the High court by its order dt. 30.4.53 granted the leave for appeal p. 2 Cf

The C.P required a sum of Rs. 500 towards printing deposit and as it should be deposited before 10.6.53, the commr. in anticipation of approval of Govt., sent the money to the C.P. He requests that his action may be approved.

5. The appeal in the Supreme Court regarding Shirur mutt (C.A.P 259/51) is being dealt with in the L.P (502 to 4/52) below. The decision of the Supreme court is still awaited. As the present case involves substantial questions of law as to the interpretation of the constitution of India under Art. 19(1)(f), 25 & 26 as was in the case of Shirur mutt also the commr's action in having filed

Listed

Perm

43659/20 Lf 2468 DRS

the appeal and incurred the expenditure may be approved.

6. Legal and Fin may see

RR 19653 PS 23/6/53

Lf DRS 24.6.53 24/6/53 S

No 43659 RWV/53-1 25-6-53.

N (1) 24/6

Legal / Fin

Legal (Drafting-A) Dept

ASSISTANT SECRETARY 19496 26 JUN 1953 LEGAL DEPARTMENT

Seen in Legal

Legal U-O-10466/53-1 25/6/53

25/6

Finance

Finance Clerk

ADDITIONAL DEPUTY SECRETARY TO GOVERNMENT 27 JUN 1953 52520 FINANCE DEPARTMENT

Notes on pages 1-3 above may be perused and the case returned to R.W.Dept.

1.7.53 RW 1.7.53

Fin 2/7/53 R.W.V

Fin U-O No 52520 dtd 3/7/53.

The notes from p.1 and may be perused. A draft order is submitted below for approval.

ADDITIONAL DEPUTY SECRETARY TO GOVERNMENT 6 JUL 1953 19469 RURAL WELFARE DEPARTMENT

RR 7/7/53 8.7.53

Lf 8/7/53 S

Dr Gunaratnasabapathy

8.7.53

Ellemuttamani Naidu

12/7/53

M.RR

M (RR)

SECRETARY TO GOVERNMENT 14 JUL 1953 RURAL WELFARE DEPARTMENT

K.D.Kulatunga

13-7-53

M. (Law)